

ESTTA Tracking number: **ESTTA697846**

Filing date: **09/23/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Gearbox Software, L.L.C.
Granted to Date of previous extension	09/23/2015
Address	101 E. Park Blvd., Suite 1200 Plano, TX 75074 UNITED STATES
Attorney information	Timothy G Ackermann The Ackermann Law Firm 701 Commerce St., Ste. 400 Dallas, TX 75202 UNITED STATES tim@ackermannlaw.com, docket@ackermannlaw.com Phone: 214.477.9098

Applicant Information

Application No	86452196	Publication date	05/26/2015
Opposition Filing Date	09/23/2015	Opposition Period Ends	09/23/2015
Applicant	ALIAS MX, LLC 304 MAPLEWOOD AVE PORTSMOUTH, NH 03801 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2014/11/07 First Use In Commerce: 2014/11/07
All goods and services in the class are opposed, namely: APPAREL, NAMELY, SHIRTS, PANTS AND GLOVES

Applicant Information

Application No	86452209	Publication date	05/26/2015
Opposition Filing Date	09/23/2015	Opposition Period Ends	
Applicant	ALIAS MX, LLC 304 MAPLEWOOD AVE PORTSMOUTH, NH 03801 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: APPAREL, NAMELY, SHIRTS, PANTS


AND GLOVES

Grounds for Opposition


False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2789062	Application Date	06/18/1999
Registration Date	12/02/2003	Foreign Priority Date	NONE
Word Mark	GEARBOX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1999/11/00 First Use In Commerce: 1999/11/00 computer game programs and computer game software and computer game cartridges		

U.S. Registration No.	3580356	Application Date	07/23/2008
Registration Date	02/24/2009	Foreign Priority Date	NONE
Word Mark	GEARBOX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1999/11/00 First Use In Commerce: 1999/11/00 designing and developing computer game software and video game software for use with computers, video game program systems and computer networks		

U.S. Registration No.	3631050	Application Date	10/29/2008
Registration Date	06/02/2009	Foreign Priority Date	NONE
Word Mark	GEARBOX SOFTWARE		

Design Mark	
Description of Mark	The mark consists of the word "gearbox" written above the word "software".
Goods/Services	Class 009. First use: First Use: 2001/00/00 First Use In Commerce: 2001/00/00 computer game programs and computer game software

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	GEARBOX		
Goods/Services	shirts, hoodies and hats		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	GEARBOX STORE		
Goods/Services	shirts, hoodies and hats		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Design Mark	
Goods/Services	shirts, hoodies and hats

Attachments	77529913#TMSN.png(bytes) 77602972#TMSN.png(bytes) GearboxStore-stylized-blk.jpg Opposition-Statement-of-Claims.pdf(60837 bytes) Opposition-Statement-of-Claims_Exhibits-1of2.pdf(5664222 bytes) Opposition-Statement-of-Claims_Exhibits-2of2.pdf(2965702 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy G Ackermann/
Name	Timothy G Ackermann
Date	09/23/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Gearbox Software, L.L.C.,

Opposer,

v.

Opposition No. _____

Appl. Ser. No. 86/452196

Mark: TRACK SIDE GEAR BOX

&

Appl. Ser. No. 86/452209

Mark: #TRACKSIDEGEARBOX

Iris Strategic Marketing Support, Inc.,

Applicant.

NOTICE OF OPPOSITION

In re: Application Appl. Serial No. 86/452196 for TRACK SIDE GEAR BOX and
Application Serial No. 86/452209 for #TRACKSIDEGEARBOX:

Gearbox Software, L.L.C. (“Gearbox”), a Texas limited liability company, with a business address of 101 East Park Blvd., Suite 1200, Plano, Texas 75074, believes that it will be damaged by registration of the marks identified above. The grounds for opposition are:

1. Gearbox is the owner of Registration No. 2789062, filed 18 Jun. 1999, and as issued by the U.S. Patent and Trademark Office (“PTO”) on 02 Dec. 2003 for the mark GEARBOX for “computer game programs and computer game software and computer game cartridges.”
2. Registration No. 2789062 is properly in force, and has been renewed under 15 U.S.C. § 1059 and a declaration under 15 U.S.C. § 1058 has been accepted therefor for the registered goods. A 15 U.S.C § 1065 affidavit has been acknowledged for this registration.
3. Gearbox is the owner of Registration No. 3580356 filed 23 Jul. 2008, and as issued by the PTO on 24 Feb. 2009 for the mark GEARBOX for “designing and developing computer game software and video game software for use with computers, video game program systems and computer networks.”
4. Registration No. 3580356 is properly in force, and a declaration under 15 U.S.C. § 1058 has been accepted therefor for the registered services. A 15 U.S.C § 1065 affidavit has been acknowledged for this registration.
5. Gearbox is the owner of Registration No. 3631050 filed 29 Oct. 2008, and as issued by the PTO on 02 Jun. 2009 for the mark GEARBOX SOFTWARE (& design) for “computer game programs and computer game software.”

6. Registration No. 3631050 is properly in force, and a declaration under 15 U.S.C. § 1058 has been accepted therefor for the registered goods. A 15 U.S.C § 1065 affidavit has been acknowledged for this registration.
7. As proof of status and title of the above marks (the “Registered Gearbox Marks”), the following true and correct copies are attached as Exhibits hereto and incorporated by reference herein: (i) registration certificates for the three registrations recited above (Exhibits A – C); and (ii) status information from TSDR for the three registrations recited above (Exhibits D – F) (“the Gearbox Registrations”).
8. In addition, Gearbox owns unregistered rights in several relevant marks (the “Unregistered Gearbox Marks”) as described in Paragraph 9 below.
9. Gearbox is the owner of the marks GEARBOX, GEARBOX STORE (stylized) and GEARBOX STORE all as used for apparel including shirts, hoodies and hats. Attached as Exhibits G & H hereto and incorporated by reference herein, are true and correct copies of materials relating to these goods.
10. Each of the above marks is inherently distinctive as applied to the respective goods or services recited above.
11. Each of the above marks points uniquely and unmistakably to Gearbox.
12. Gearbox has made substantially exclusive and continuous use of each of the above marks for the respective goods or services recited above.
13. Such continuous use in commerce has resulted in the above Gearbox marks becoming well-known to and favorably recognized by the relevant trades and publics in connection for the respective goods or services recited above with those in Gearbox’s natural zone of expansion of the market for its products.
14. Gearbox has expended considerable funds and made significant efforts in promoting and advertising its goods and services identified by the above-identified marks. Goods and services identified by the Registered Gearbox Marks have, moreover achieved critical and/or commercial success, received substantial media attention and won industry awards.
15. Despite the above, on 12 Nov. 2014, Applicant, Alias MX, LLC (“Alias”) filed Application Serial No. 86/452196 seeking to register TRACK SIDE GEAR BOX and Application Serial No. 86/452209 seeking to register #TRACKSIDEGEARBOX; each for the following goods: “apparel, namely shirts, pants and gloves” (the “Opposed Applications” for the “TRACK SIDE GEAR BOX marks”).
16. Gearbox is not connected with the services recited in the Opposed Applications or performed by Applicant under the marks therein.
17. Gearbox has made use of its Unregistered Gearbox Marks and the Registered Gearbox Marks in connection with the respectively recited goods and services since before the filing date of the Opposed Applications and, on information and belief, since at least before any use of the TRACK SIDE GEAR BOX marks for the goods recited therein. Gearbox is entitled to priority based on that prior use. Gearbox is also entitled to priority for the Registered Gearbox Marks based on constructive use and their filing dates.

18. It must be assumed that the goods identified in the recitation of goods in the Opposed Applications will travel through all trade channels that would be appropriate for such services and be directed to and used in connection with all types of consumers and industries.
19. If Applicant is granted registration of the TRACK SIDE GEAR BOX or #TRACKSIDEGEARBOX marks, it would obtain a *prima facie* exclusive right to use of those marks that would cause damage and injury to Gearbox.
20. Therefor and each in the alternative:

Claim 1:

21. The foregoing paragraphs are incorporated herein.
22. In view of the similarities between the Unregistered Gearbox Marks, the TRACK SIDE GEAR BOX marks that are the subject of the Opposed Applications, and the relationship between Gearbox's goods as identified by its marks and with those in Gearbox's natural zone of expansion of the market for its products, and the goods identified in the Opposed Applications, it is likely that members of the public will erroneously believe that Applicant's goods originate with, or are in some manner connected or associated with, or sponsored by, Gearbox, all to the harm of Gearbox's goodwill and reputation.
23. Applicant's TRACK SIDE GEAR BOX marks so resemble the Unregistered Gearbox Marks when used on or in connection with Applicant's goods as to be likely to cause confusion, mistake or to deceive. Applicant's Opposed Applications are therefore precluded from registration under 15 U.S.C. § Sect. 1052(d).

Claim 2:

24. The foregoing paragraphs are incorporated herein.
25. Applicant's use of the TRACK SIDE GEAR BOX marks would also lead to a false suggestion of a connection with Gearbox. The TRACK SIDE GEAR BOX marks sought to be registered are the same as, or a close approximation of, the name or identity previously used by Gearbox. The TRACK SIDE GEAR BOX marks sought to be registered would be recognized as such, in that they point uniquely and unmistakably to Gearbox, even though Gearbox is not connected with the goods sold or proposed to be sold by Applicant under the TRACK SIDE GEAR BOX marks. The fame or reputation of Gearbox is of such a nature that a connection with Gearbox would be presumed when Applicant's marks are used on its goods. Applicant's Opposed Applications are therefore precluded from registration under 15 U.S.C. § Sect. 1052(a).

Claim 3:

26. The foregoing paragraphs are incorporated herein.
27. The Registered Gearbox Marks are famous, and have been so since before Applicant began any use of the TRACK SIDE GEAR BOX marks. Applicant's use or registration of the TRACK SIDE GEAR BOX marks would lead to dilution of the distinctive quality of the Registered Gearbox Marks. Applicant's Opposed Applications are therefore precluded from registration under 15 U.S.C. § Sect. 1052(a).

Claim 4:

28. The foregoing paragraphs are incorporated herein.
29. Applicant's Opposed Applications are each precluded from registration because Applicant committed fraud during the prosecution of the Opposed Applications.
30. During prosecution of each of the Opposed Applications, the USPTO issued an office action (dated 03 Feb. 2015) that, *inter alia*, refused registration of the applied-for marks under 15 U.S.C. § Sect. 1052(e)(1) because "the applied-for mark merely describes a feature of the applicant's goods."
31. As a basis for that refusal, the Office Actions asserted that each of the terms "track side" and "gear" and "box" were in some fashion descriptive of the applied-for goods.
32. The office action (dated 03 Feb. 2015) included the following requirement ("the USPTO requirement"):

Additional Information Regarding Descriptiveness

To permit proper examination of the application, applicant must submit additional product information about the goods. [citations omitted] The requested product information should include fact sheets, instruction manuals, and/or advertisements. If these materials are unavailable, the applicant should submit similar documentation for goods of the same type, explaining how its own product will differ. If the goods feature new technology and no competing goods are available, applicant must provide a detailed description of the goods.

The submitted factual information must make clear how the goods operate, their salient features, and their prospective customers and channels of trade. Conclusory statements regarding the goods will not satisfy this requirement

In addition, the applicant must respond to the following questions:

1. What is the meaning of the term "trackside" in the mark?
 2. Are the applicant's goods to be used trackside at racing events?
 3. If the applicant's goods are not to be used trackside, why is this term used in the mark? Does it have some other meaning?
 4. What is the meaning of the term "gear box" in the mark?
 5. Are the applicant's goods provided in a gear box?
 6. If the applicant's goods are not provided in a gear box, why is this term used in the mark? Does it have some other meaning?
33. During prosecution of the Opposed Applications, and in response to the USPTO refusal to register the marks, Applicant made certain statements.
 34. First, it titled a section heading as "I. The words "Track Side" as they function in the mark are suggestive because they carry no literal meaning and convey no information as to the goods, namely, apparel." (the "No Information statement").
 35. Second, it stated that "the term 'track side' has no meaning with regard to apparel as it functions in the mark other than as an allusion to racing generally." (the "Allusion Only statement").

36. Third, it stated: “Further, as noted above, there is no commonly understood concept or notion of apparel that is specifically meant to be worn ‘track side.’” (the “No Concept statement”).
37. Fourth, it stated that “‘track side’ has no recognized or understandable meaning with regard to apparel,” (the “No Understandable Meaning statement”).
38. Fifth, it stated that “‘Track Side’ and ‘Track Side Gear Box’ has no meaning in the clothing or motocross-style racing industry,” (the “No Industry Meaning statement”).
39. During prosecution of the Opposed Applications, and in response to the USPTO requirement, Applicant made the following statements to answer questions 1-3 above:

1. What is the meaning of the term “trackside” in the mark?

Applicant asserts there is no literal meaning to the term “trackside” as used in the mark relating to apparel. It is simply meant to allude to racing of some sort, to suggest to the consumer that the clothing and accessories they are purchasing somehow [*sic*] to some sort of a racing setting.

2. Are the applicant’s goods to be used trackside at racing events?

Applicant asserts that its goods are not designed or intended to be used at the side of a race track at racing events. Their intended purpose is to be shipped via a normal mailing package to customers in their homes and to be worn either casually or for sporting activities. To Applicant’s knowledge there is no such thing as “trackside apparel” in the sense of apparel that is intended or designed to be worn on the side of the race track.

3. If the applicant’s goods are not to be used trackside, why is this term used in the mark? Does it have some other meaning?

Applicant asserts that the term “trackside” is used in the mark to be suggestive of a racing and races generally.

4. What is the meaning of the term “gear box” in the mark?

Applicant asserts that the term “gear box” has no established meaning in the industry, but was meant to convey to consumers that the product consists of a bundle (or box) or apparel (or gear). Accordingly, Applicant notes that of its mark TRACK SIDE GEAR BOX, the elements TRACK SIDE are the core distinctive elements that serve as source-identifiers, whereas GEAR BOX are more the more [*sic*] informative elements. In such regard, Applicant is willing to enter a disclaimer of the elements GEAR BOX.

5. Are the applicant’s goods provided in a gear box?

Applicant asserts that its goods are not provided in a “gear box,” but rather a normal cardboard mailing box, as you can see from the attached exhibits discussed further below.

6. If the applicant’s goods are not provided in a gear box, why is this term used in the mark? Does it have some other meaning?

Applicant asserts that the term “gear box” is used in the mark to identify the nature of the bundle of goods which the customer purchases and receives. Applicant notes that its identification of goods does not claim any physical box, but rather just a bundle of apparel sold together. There is no recognized industry meaning for “gear box.”

40. Thus, during prosecution of the Opposed Applications, and in response to the USPTO requirement to provide information necessary to “permit proper examination of the application[s],” Applicant made certain additional factual statements.
41. Sixth, it stated “Applicant asserts there is no literal meaning to the term “trackside” as used in the mark relating to apparel.” (the “No Literal Meaning statement”).
42. Seventh, it stated: “To Applicant’s knowledge there is no such thing as ‘trackside apparel’ in the sense of apparel that is intended or designed to be worn on the side of the race track.” (the “No Knowledge statement”).
43. The statements identified above, and specifically those identified in Paragraphs 34-38 & 41-42 (collectively, “the Factual Statements”), regarding the meaning of the terms “track side” and “trackside” were false. On information and belief, the terms “track side” and “trackside” have significance or meaning or convey information, other than with respect to trademark significance, and that such a “thing as ‘trackside apparel’” and a “commonly understood concept or notion of apparel that is specifically meant to be worn ‘track side’” exist as applied to the goods listed in the application, and in the context of Applicant’s goods and industry. Information supporting this belief includes at least the following:

Use of the elements “track side” and the equivalent “trackside” and “track-side” (as shown in examples provided as Exhibits I–N)

Applicant’s “submitted factual information” was required to “make clear how the goods operate, their salient features, and their prospective customers and channels of trade.”

Applicant’s “submitted factual information” including the submitted “Exhibit A”

That submitted factual information included the No Literal Meaning statement and the No Knowledge statement.

Exhibit N further shows that the No Knowledge statement was false, as it was a statement made by Applicant itself at a time prior thereto.

44. On information and belief, Applicant’s Factual Statements were made knowing them to be false, at least in part. Information supporting this belief includes at least the above and the following:

The applied-for marks were subject to a refusal for descriptiveness.

Applicant asserted that it was “willing to enter a disclaimer of the elements GEAR BOX” having asserted that those terms were “meant to convey to consumers that the product consists of a bundle (or box) or apparel (or gear).”

Having conceded descriptiveness of two of the terms of the marks, Applicant needed to persuade the PTO that—as it asserted—the remainder was not descriptive, or the refusal would stand.

Applicant asserted that “the elements TRACK SIDE are the core distinctive elements that serve as source-identifiers” to overcome the descriptiveness refusal.

Applicant itself, at a time before it made the Factual Statements, used the term “trackside” to convey information about its own apparel goods, saying “Don’t forget to snag some trackside apparel, too!”

Applicant itself, at a time before it made the Factual Statements, used the term “trackside apparel” to describe its own goods, saying “Don’t forget to snag some trackside apparel, too!”

Applicant knew, when it made the Factual Statements, that the elements “track side” and the equivalent “trackside” and “track-side” did not function as source-identifiers.

Applicant knew, when it made the Factual Statements, that the elements “track side” and the equivalent “trackside” and “track-side” provided information and meaning.

Applicant knew, when it made the Factual Statements, that the elements “track side” and the equivalent “trackside” and “track-side” described a form or type of apparel.

Applicant submitted the No Literal Meaning statement and the No Knowledge statement in direct response to a USPTO requirement to “make clear how the goods operate, their salient features, and their prospective customers and channels of trade.”

Applicant was required to have made an inquiry reasonable under the circumstances with respect both to its response and to the USPTO requirement.

Such an inquiry would require at least determining if Applicant’s own statements contradicted the response and the answers to the USPTO requirement, especially in light of the No Knowledge Statement.

45. Applicant’s response to the USPTO requirements (including the Factual Statements therein) was material because, as stated by the Office Action, it was necessary to “permit proper examination of the application,” and because failure to respond could have been grounds for refusing registration of the Opposed Application.
46. Applicant’s Factual Statements were material because the applied-for marks were refused as being descriptive, and they were made to persuade the USPTO that the applied-for marks were registrable.
47. Applicant’s Factual Statements were material because, had they not been false, they could have formed the basis for grounds, namely descriptiveness, for refusing registration of the Opposed Applications.
48. The USPTO relied upon these statements because the Factual Statements were made in response to one or both of the USPTO requirements and the refusals to register and the USPTO issued a Notice of Allowance for each Opposed Application subsequent to the Factual Statements.
49. On information and belief, Applicant’s knowingly-made material misrepresentations were made to procure a registration from each of the Opposed Applications and with the intent to deceive the USPTO.

Claim 5:

50. The foregoing paragraphs are incorporated herein.

51. Despite Applicant's offer to disclaim the GEAR BOX elements in the marks, the PTO failed to require or permit it to do so, and Applicant failed to amend the Opposed Applications to include such a disclaimer.

52. Applicant's use of the TRACK SIDE GEAR BOX or #TRACKSIDEGEARBOX marks, when used on or in connection with Applicant's goods, are merely descriptive thereof. Applicant's Opposed Applications are therefore precluded from registration under 15 U.S.C. § Sect. 1052(e).

RELIEF REQUESTED

WHEREFORE, Opposer prays that registration of the marks of Application Serial No. 86/452196 and Application Serial No. 86/452209 for the goods identified in those applications be refused and that this Opposition be sustained.

Dated: 23 September 2015

/Timothy G Ackermann/
Timothy G. Ackermann
The Ackermann Law Firm
Texas Bar No. 24001621
tim@ackermannlaw.com
701 Commerce St., Suite 400
Dallas, Texas 75202
Tel.: 214-477-9098
Fax: 214-453-0810

*Attorney for Opposer,
Gearbox Software, L.L.C.*

CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing Notice of Opposition, which was filed electronically with the Trademark Trial and Appeal Board, was served on Steven J. Grossman, 23 September 2015, per Rule 2.119, via:

xx First Class Mail, postage prepaid at the following address:

Steven J. Grossman, Ph.D.
Grossman, Tucker, Perreault & Pfleger, PLLC
55 S Commercial St.
Manchester NH 03101-2606

/Timothy G Ackermann/
Timothy G. Ackermann

Exhibit A

7463717



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

March 05, 2014

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,789,062 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.**

REGISTERED FOR A TERM OF 10 YEARS FROM *December 02, 2003*

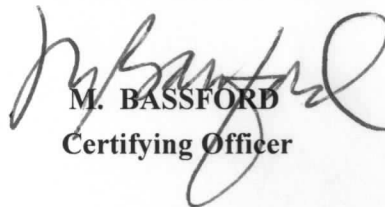
SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

REGISTRANT

By Authority of the

**Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office**


M. BASSFORD
Certifying Officer



Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,789,062

United States Patent and Trademark Office

Registered Dec. 2, 2003

**TRADEMARK
PRINCIPAL REGISTER**

GEARBOX

GEARBOX SOFTWARE LLC (TEXAS LIMITED
LIABILITY COMPANY)
101 WEST BUCKINGHAM
RICHARDSON, TX 75081

FIRST USE 11-0-1999; IN COMMERCE 11-0-1999.

SN 75-731,822, FILED 6-18-1999.

FOR: COMPUTER GAME PROGRAMS AND
COMPUTER GAME SOFTWARE AND COMPUTER
GAME CARTRIDGES, IN CLASS 9 (U.S. CLS. 21, 23,
26, 36 AND 38).

GLENN CLARK, EXAMINING ATTORNEY

Exhibit B

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)



John Doll

Acting Director of the United States Patent and Trademark Office

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,580,356

Registered Feb. 24, 2009

**SERVICE MARK
PRINCIPAL REGISTER**

GEARBOX

GEARBOX SOFTWARE, LLC (TEXAS LIMITED
LIABILITY COMPANY)
SUITE 1200
101 E. PARK BLVD.
PLANO, TX 75074

FOR: DESIGNING AND DEVELOPING COMPU-
TER GAME SOFTWARE AND VIDEO GAME SOFT-
WARE FOR USE WITH COMPUTERS, VIDEO
GAME PROGRAM SYSTEMS AND COMPUTER
NETWORKS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 11-0-1999; IN COMMERCE 11-0-1999.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,635,892 AND
2,789,062.

SER. NO. 77-529,913, FILED 7-23-2008.

EDWARD FENNESSY, EXAMINING ATTORNEY

Exhibit C

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)



John Doll

Acting Director of the United States Patent and Trademark Office

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 3,631,050

United States Patent and Trademark Office

Registered June 2, 2009

**TRADEMARK
PRINCIPAL REGISTER**

gearbox
software

GEARBOX SOFTWARE, LLC (TEXAS LIMITED
LIABILITY COMPANY)
SUITE 1200
101 E. PARK BLVD.
PLANO, TX 75074

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SOFTWARE", APART FROM THE
MARK AS SHOWN.

FOR: COMPUTER GAME PROGRAMS AND
COMPUTER GAME SOFTWARE, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).

THE MARK CONSISTS OF THE WORD "GEAR-
BOX" WRITTEN ABOVE THE WORD "SOFTWARE".

FIRST USE 0-0-2001; IN COMMERCE 0-0-2001.

SER. NO. 77-602,972, FILED 10-29-2008.

OWNER OF U.S. REG. NOS. 2,635,892 AND
2,789,062.

BILL DAWE, EXAMINING ATTORNEY

Exhibit D

STATUS

DOCUMENTS

[Back to Search](#)

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Generated on: This page was generated by TSDR on 2015-09-21 20:51:09 EDT**Mark:** GEARBOX

No Image exists for this case.

US Serial Number: 75731822**Application Filing Date:** Jun. 18, 1999**US Registration Number:** 2789062**Registration Date:** Dec. 02, 2003**Register:** Principal**Mark Type:** Trademark**Status:** The registration has been renewed.**Status Date:** Jun. 14, 2014**Publication Date:** Dec. 26, 2000**Notice of Allowance Date:** Jul. 01, 2003▼ **Mark Information**▼ **Expand All****Mark Literal Elements:** GEARBOX**Standard Character Claim:** No**Mark Drawing Type:** 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)▼ **Goods and Services****Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: computer game programs and computer game software and computer game cartridges

International Class(es):	009 - Primary Class	U.S Class(es):	021, 023, 026, 036, 038
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Nov. 1999	Use in Commerce:	Nov. 1999

▼ Basis Information (Case Level)

Filed Use:	No	Currently Use:	Yes	Amended Use:	No
Filed ITU:	Yes	Currently ITU:	No	Amended ITU:	No
Filed 44D:	No	Currently 44D:	No	Amended 44D:	No
Filed 44E:	No	Currently 44E:	No	Amended 44E:	No
Filed 66A:	No	Currently 66A:	No		
Filed No Basis:	No	Currently No Basis:	No		

▼ Current Owner(s) Information

Owner Name:	Gearbox Software LLC		
Owner Address:	101 East Park Blvd., Suite 1200 Plano, TEXAS 75074 UNITED STATES		
Legal Entity Type:	LIMITED LIABILITY COMPANY	State or Country Where Organized:	TEXAS

▼ Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Timothy G Ackermann	Docket Number:	011-012-C09-
Attorney Primary Email Address:	tim@ackermannlaw.com	Attorney Email Authorized:	Yes

Correspondent

Correspondent Name/Address: Timothy G Ackermann
The Ackermann Law Firm
701 Commerce St., Suite 400
Dallas, TEXAS 75202
UNITED STATES

Phone: 2144779098

Fax: 2146530810

Correspondent e-mail: tim@ackermannlaw.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

▼ Prosecution History

Date	Description	Proceeding Number
Jun. 14, 2014	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Jun. 14, 2014	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	66607
Jun. 14, 2014	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	66607
Jun. 13, 2014	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	66607
May 27, 2014	TEAS SECTION 8 & 9 RECEIVED	
Apr. 22, 2014	ATTORNEY REVOKED AND/OR APPOINTED	
Apr. 22, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Dec. 07, 2009	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	66607
Dec. 07, 2009	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	66607
Nov. 24, 2009	TEAS SECTION 8 & 15 RECEIVED	
Sep. 09, 2008	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 02, 2003	REGISTERED-PRINCIPAL REGISTER	
Sep. 30, 2003	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Sep. 23, 2003	ASSIGNED TO EXAMINER	69191
Sep. 17, 2003	CASE FILE IN TICRS	
Aug. 26, 2003	STATEMENT OF USE PROCESSING COMPLETE	
Aug. 04, 2003	USE AMENDMENT FILED	

Aug. 04, 2003	PAPER RECEIVED	
Jul. 01, 2003	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Mar. 21, 2003	OPPOSITION TERMINATED NO. 999999	123466
Mar. 21, 2003	OPPOSITION DISMISSED NO. 999999	123466
Jul. 13, 2001	OPPOSITION INSTITUTED NO. 999999	123466
Jan. 12, 2001	EXTENSION OF TIME TO OPPOSE RECEIVED	
Dec. 26, 2000	PUBLISHED FOR OPPOSITION	
Nov. 24, 2000	NOTICE OF PUBLICATION	
Jul. 31, 2000	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 19, 2000	LETTER OF SUSPENSION MAILED	
Jan. 12, 2000	ASSIGNED TO EXAMINER	76417

▼ Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Dec. 02, 2013

▼ TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE

Date in Location: Jun. 14, 2014

▼ Assignment Abstract Of Title Information - None recorded

▼ Proceedings

Summary

▼ Party type

▼ Proceeding type

Number of Proceedings: 1

▼ **Type of Proceeding: Opposition**▼ [Expand All](#)**Proceeding Number:** [91215671](#)**Filing Date:** Mar 28, 2014**Status:** Pending**Status Date:** Mar 28, 2014**Interlocutory Attorney:** ANDREW P BAXLEY**Defendant****Name:** Iris Strategic Marketing Support, Inc.

Correspondent Address: MICHAEL ELBEIN
 HOVEY WILLIAMS LLP
 10801 MASTIN ST STE 1000, 84 CORPORATE WOODS
 OVERLAND PARK KS , 66210-1697
 UNITED STATES

Correspondent e-mail: melbein@hoveywilliams.com , litigation@hoveywilliams.com**Associated marks**

Mark	Application Status	Serial Number	Registration Number
GEARBOX	Opposition Pending	86058155	

Plaintiff(s)**Name:** Gearbox Software, L.L.C.

Correspondent Address: TIMOTHY G ACKERMANN
 THE ACKERMANN LAW FIRM
 701 COMMERCE ST SUITE 400
 DALLAS TX , 75202
 UNITED STATES

Correspondent e-mail: tim@ackermannlaw.com , docket@ackermannlaw.com**Associated marks**

Mark	Application Status	Serial Number	Registration Number
GEARBOX	Renewed	75731822	2789062
GEARBOX	Section 8 and 15 - Accepted and Acknowledged	77529913	3580356
	Section 8 and 15 - Accepted		

GEARBOX SOFTWARE

and Acknowledged

[77602972](#)[3631050](#)**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 28, 2014	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Apr 01, 2014	May 11, 2014
3	PENDING, INSTITUTED	Apr 01, 2014	
4	STIP FOR EXT	May 04, 2014	
5	EXTENSION OF TIME GRANTED	May 04, 2014	
6	ANSWER	Jun 10, 2014	
7	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Jul 18, 2014	
8	SUSPENDED	Aug 04, 2014	
9	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Oct 17, 2014	
10	SUSPENDED	Oct 24, 2014	
11	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Jan 14, 2015	
12	SUSPENDED	Feb 13, 2015	
13	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Mar 10, 2015	
14	SUSPENDED	Mar 27, 2015	
15	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Apr 06, 2015	
16	SUSPENDED	Apr 20, 2015	
17	STIP FOR EXT	Jun 10, 2015	
18	EXTENSION OF TIME GRANTED	Jun 10, 2015	
19	PAPER RECEIVED AT TTAB	Sep 14, 2015	

Exhibit E

STATUS**DOCUMENTS**[Back to Search](#)

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Generated on: This page was generated by TSDR on 2015-09-21 21:06:09 EDT**Mark:** GEARBOX

GEARBOX

US Serial Number: 77529913**Application Filing Date:** Jul. 23, 2008**US Registration Number:** 3580356**Registration Date:** Feb. 24, 2009**Register:** Principal**Mark Type:** Service Mark**Status:** A Sections 8 and 15 combined declaration has been accepted and acknowledged.**Status Date:** Jun. 23, 2014**Publication Date:** Dec. 09, 2008

▼ Mark Information

[▲ Collapse All](#)**Mark Literal Elements:** GEARBOX**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

▼ Related Properties Information

Claimed Ownership of US Registrations: [2635892](#), [2789062](#)

▼ Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: designing and developing computer game software and video game software for use with computers, video game program systems and computer networks

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 1999

Use in Commerce: Nov. 1999

▼ Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

▼ Current Owner(s) Information

Owner Name: Gearbox Software, LLC

Owner Address: Suite 1200
101 E. Park Blvd.
Plano, TEXAS 75074
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

**State or Country Where
Organized:** TEXAS

▼ Attorney/Correspondence Information

Attorney of Record**Attorney Name:** Timothy G. Ackermann**Docket Number:** 011-012-C42-**Attorney Primary Email** tim@ackermannlaw.com**Attorney Email Authorized:** Yes**Address:****Correspondent****Correspondent Name/Address:** Timothy G. AckermannThe Ackermann Law Firm
701 Commerce St., Ste. 400
Dallas, TEXAS 75202
UNITED STATES**Phone:** 2144779098**Fax:** 2144530810**Correspondent e-mail:** tim@ackermannlaw.com
docket@ackermannlaw.com**Correspondent e-mail Authorized:** Yes**Domestic Representative - Not Found**▼ **Prosecution History**

Date	Description	Proceeding Number
Jun. 23, 2014	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jun. 23, 2014	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	69471
Jun. 23, 2014	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	69471
Jun. 06, 2014	TEAS SECTION 8 & 15 RECEIVED	
Apr. 22, 2014	ATTORNEY REVOKED AND/OR APPOINTED	
Apr. 22, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Feb. 24, 2009	REGISTERED-PRINCIPAL REGISTER	
Dec. 09, 2008	PUBLISHED FOR OPPOSITION	
Nov. 19, 2008	NOTICE OF PUBLICATION	
Nov. 06, 2008	LAW OFFICE PUBLICATION REVIEW COMPLETED	74215
Nov. 06, 2008	ASSIGNED TO LIE	74215
Oct. 30, 2008	APPROVED FOR PUB - PRINCIPAL REGISTER	

Oct. 30, 2008	ASSIGNED TO EXAMINER	81879
Sep. 13, 2008	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Aug. 12, 2008	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jul. 28, 2008	NEW APPLICATION ENTERED IN TRAM	

▼ Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

▼ TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMO LAW OFFICE 114

Date in Location: Jun. 23, 2014

▼ Assignment Abstract Of Title Information - None recorded

▼ Proceedings

Summary

▼ Party type

▼ Proceeding type

Number of Proceedings: 1

▼ Type of Proceeding: Opposition

▼ Expand All

Proceeding Number: [91215671](#)

Filing Date: Mar 28, 2014

Status: Pending

Status Date: Mar 28, 2014

Interlocutory Attorney: ANDREW P BAXLEY

Defendant

Name: Iris Strategic Marketing Support, Inc.

Correspondent Address: MICHAEL ELBEIN

HOVEY WILLIAMS LLP
 10801 MASTIN ST STE 1000, 84 CORPORATE WOODS
 OVERLAND PARK KS , 66210-1697
 UNITED STATES

Correspondent e-mail: melbein@hoveywilliams.com , litigation@hoveywilliams.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
GEARBOX	Opposition Pending	86058155	

Plaintiff(s)

Name: Gearbox Software, L.L.C.

Correspondent Address: TIMOTHY G ACKERMANN
 THE ACKERMANN LAW FIRM
 701 COMMERCE ST SUITE 400
 DALLAS TX , 75202
 UNITED STATES

Correspondent e-mail: tim@ackermannlaw.com , docket@ackermannlaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
GEARBOX	Renewed	75731822	2789062
GEARBOX	Section 8 and 15 - Accepted and Acknowledged	77529913	3580356
GEARBOX SOFTWARE	Section 8 and 15 - Accepted and Acknowledged	77602972	3631050

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 28, 2014	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Apr 01, 2014	May 11, 2014
3	PENDING, INSTITUTED	Apr 01, 2014	
4	STIP FOR EXT	May 04, 2014	
5	EXTENSION OF TIME GRANTED	May 04, 2014	

6	ANSWER	Jun 10, 2014
7	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Jul 18, 2014
8	SUSPENDED	Aug 04, 2014
9	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Oct 17, 2014
10	SUSPENDED	Oct 24, 2014
11	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Jan 14, 2015
12	SUSPENDED	Feb 13, 2015
13	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Mar 10, 2015
14	SUSPENDED	Mar 27, 2015
15	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Apr 06, 2015
16	SUSPENDED	Apr 20, 2015
17	STIP FOR EXT	Jun 10, 2015
18	EXTENSION OF TIME GRANTED	Jun 10, 2015
19	PAPER RECEIVED AT TTAB	Sep 14, 2015

Exhibit F

STATUS**DOCUMENTS**[Back to Search](#)

Print

Generated on: This page was generated by TSDR on 2015-09-21 21:08:16 EDT**Mark:** GEARBOX SOFTWARE**US Serial Number:** 77602972**Application Filing Date:** Oct. 29, 2008**US Registration Number:** 3631050**Registration Date:** Jun. 02, 2009**Register:** Principal**Mark Type:** Trademark**Status:** A Sections 8 and 15 combined declaration has been accepted and acknowledged.**Status Date:** Jun. 18, 2014**Publication Date:** Mar. 17, 2009**▼ Mark Information****▲ Collapse All****Mark Literal Elements:** GEARBOX SOFTWARE**Standard Character Claim:** No**Mark Drawing Type:** 5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED FORM**Description of Mark:** The mark consists of the word "gearbox" written above the word "software".**Color(s) Claimed:** Color is not claimed as a feature of the mark.**Disclaimer:** "SOFTWARE"**▼ Related Properties Information****Claimed Ownership of US Registrations:** [2635892](#), [2789062](#)**▼ Goods and Services**

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: computer game programs and computer game software

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: 2001

Use in Commerce: 2001

▼ Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

▼ Current Owner(s) Information

Owner Name: Gearbox Software, LLC

Owner Address: Suite 1200
Plano, TEXAS 75074
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

**State or Country Where
Organized:** TEXAS

▼ Attorney/Correspondence Information

Attorney of Record**Attorney Name:** Timothy G Ackermann**Docket Number:** 011-013-C09-**Attorney Primary Email** tim@ackermannlaw.com**Attorney Email Authorized:** Yes**Address:****Correspondent****Correspondent Name/Address:** Timothy G Ackermann
The Ackermann Law Firm
701 Commerce St., Ste. 400
Dallas, TEXAS 75202
UNITED STATES**Phone:** 2144779098**Fax:** 2144530810**Correspondent e-mail:** tim@ackermannlaw.com**Correspondent e-mail Authorized:** Yes**Domestic Representative - Not Found**▼ **Prosecution History**

Date	Description	Proceeding Number
Jun. 18, 2014	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jun. 18, 2014	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	68502
Jun. 18, 2014	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	68502
Jun. 03, 2014	TEAS SECTION 8 & 15 RECEIVED	
Apr. 22, 2014	ATTORNEY REVOKED AND/OR APPOINTED	
Apr. 22, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jun. 02, 2009	REGISTERED-PRINCIPAL REGISTER	
Mar. 17, 2009	PUBLISHED FOR OPPOSITION	
Feb. 25, 2009	NOTICE OF PUBLICATION	
Feb. 10, 2009	LAW OFFICE PUBLICATION REVIEW COMPLETED	77312
Feb. 10, 2009	ASSIGNED TO LIE	77312
Jan. 30, 2009	APPROVED FOR PUB - PRINCIPAL REGISTER	

Jan. 30, 2009

ASSIGNED TO EXAMINER

76838

Nov. 03, 2008

NEW APPLICATION ENTERED IN TRAM

▼ Maintenance Filings or Post Registration Information**Affidavit of Continued Use:** Section 8 - Accepted**Affidavit of Incontestability:** Section 15 - Accepted**▼ TM Staff and Location Information****TM Staff Information - None****File Location****Current Location:** TMEG LAW OFFICE 108**Date in Location:** Jun. 18, 2014**▼ Assignment Abstract Of Title Information - None recorded****▼ Proceedings****Summary****▼ Party type****▼ Proceeding type****Number of Proceedings:** 1**▼ Type of Proceeding: Opposition****▼ Expand All****Proceeding Number:** [91215671](#)**Filing Date:** Mar 28, 2014**Status:** Pending**Status Date:** Mar 28, 2014**Interlocutory Attorney:** ANDREW P BAXLEY**Defendant****Name:** Iris Strategic Marketing Support, Inc.**Correspondent Address:** MICHAEL ELBEIN
HOVEY WILLIAMS LLP
10801 MASTIN ST STE 1000, 84 CORPORATE WOODS
OVERLAND PARK KS , 66210-1697

UNITED STATES

Correspondent e-mail: melbein@hovewilliams.com , litigation@hovewilliams.com**Associated marks**

Mark	Application Status	Serial Number	Registration Number
GEARBOX	Opposition Pending	86058155	

Plaintiff(s)**Name:** Gearbox Software, L.L.C.

Correspondent Address: TIMOTHY G ACKERMANN
 THE ACKERMANN LAW FIRM
 701 COMMERCE ST SUITE 400
 DALLAS TX , 75202
 UNITED STATES

Correspondent e-mail: tim@ackermannlaw.com , docket@ackermannlaw.com**Associated marks**

Mark	Application Status	Serial Number	Registration Number
GEARBOX	Renewed	75731822	2789062
GEARBOX	Section 8 and 15 - Accepted and Acknowledged	77529913	3580356
GEARBOX SOFTWARE	Section 8 and 15 - Accepted and Acknowledged	77602972	3631050

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 28, 2014	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Apr 01, 2014	May 11, 2014
3	PENDING, INSTITUTED	Apr 01, 2014	
4	STIP FOR EXT	May 04, 2014	
5	EXTENSION OF TIME GRANTED	May 04, 2014	
6	ANSWER	Jun 10, 2014	
7	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Jul 18, 2014	

8	SUSPENDED	Aug 04, 2014
9	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Oct 17, 2014
10	SUSPENDED	Oct 24, 2014
11	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Jan 14, 2015
12	SUSPENDED	Feb 13, 2015
13	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Mar 10, 2015
14	SUSPENDED	Mar 27, 2015
15	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Apr 06, 2015
16	SUSPENDED	Apr 20, 2015
17	STIP FOR EXT	Jun 10, 2015
18	EXTENSION OF TIME GRANTED	Jun 10, 2015
19	PAPER RECEIVED AT TTAB	Sep 14, 2015

Exhibit G

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\$9.99 (12)\$20.00 -
\$20.00 (14)

GENDER

Female (6)

Male (20)

GAME

Borderlands (23)

Homeworld (3)

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T-SHIRTS

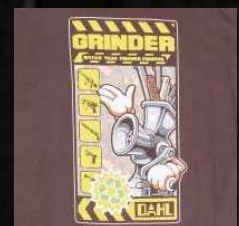
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Sort By

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[View All](#)ATHENA ASPIS
SHIELD TEE~~\$20.00~~
\$9.99[VIEW](#)ATHENA'S
TATTOO TEE~~\$20.00~~
\$9.99[VIEW](#)BUTT STALLION
TEE~~\$20.00~~
\$20.00[VIEW](#)

CL4P-TP TEE

~~\$20.00~~
\$20.00[VIEW](#)COLD DEAD
HANDS TEE~~\$20.00~~
\$20.00FIIRKAN-CLASS
SCOUT T-SHIRT~~\$20.00~~
\$9.99FLEET
COMMAND T-
SHIRT~~\$20.00~~
\$9.99

GRINDER TEE

~~\$20.00~~
\$9.99

[VIEW](#)HANDSOME
TEE**\$20.00**[VIEW](#)[VIEW](#)HOMEWORLD
LOGO T-SHIRT~~\$20.00~~**\$9.99**[VIEW](#)[VIEW](#)HYPERION
CORPORATION
TEE**\$20.00**[VIEW](#)[VIEW](#)HYPERION
CORPORATION
YELLOW TEE**\$20.00**[VIEW](#)

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Exhibit H

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NARROW RESULTS

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\$22.00 -
\$22.00 (2)

GAME

Borderlands (2)

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HEADWEAR

2ITEM(S) Sort By [View 12 per page](#)DAHL CADET
CAP**\$22.00**[VIEW](#)PURE MALIWAN
CAP**\$22.00**[VIEW](#)2ITEM(S) Sort By [View 12 per page](#)

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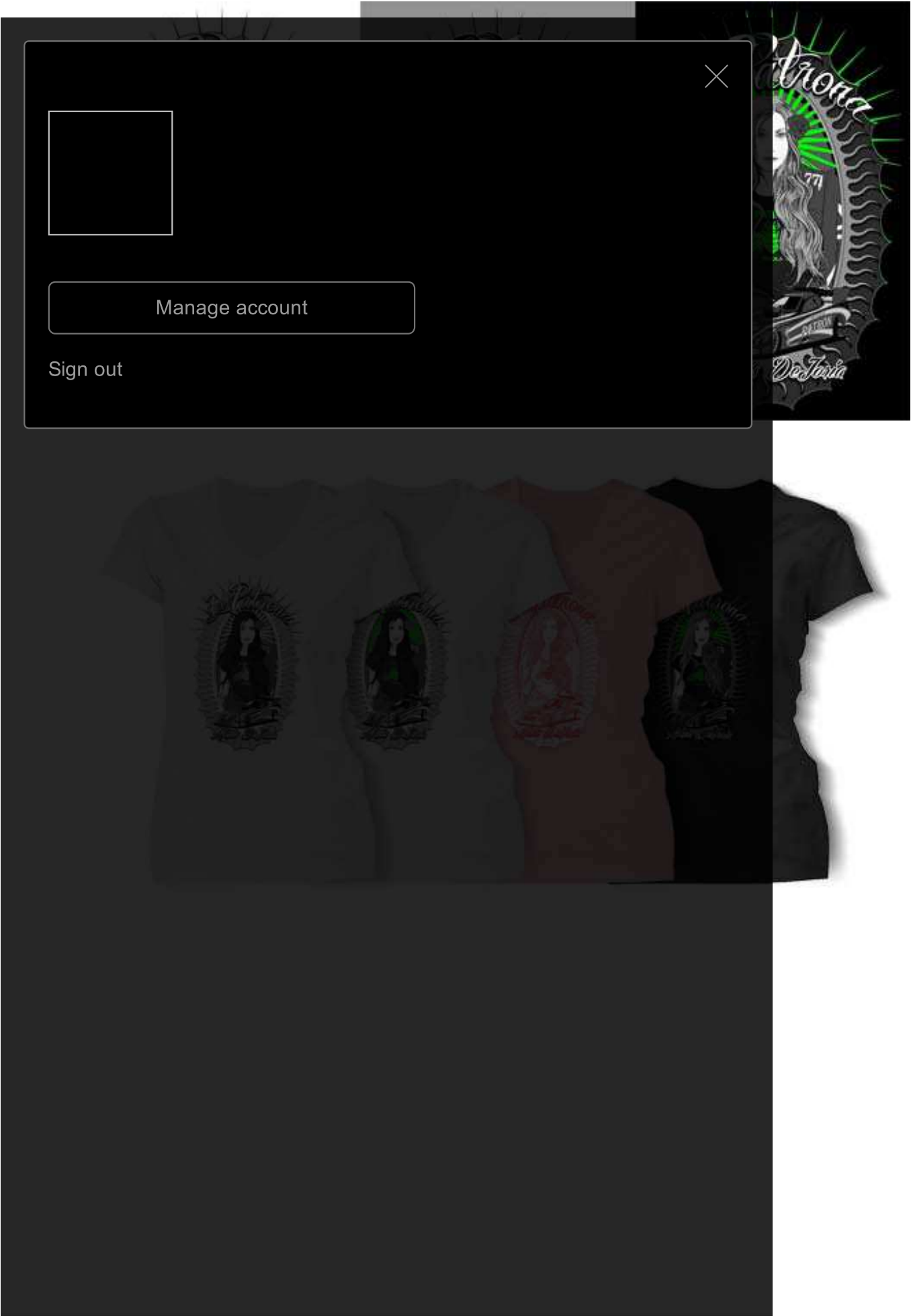
Exhibit I

**Behance****La Patrona**

Art Direction, Graphic Design, Illustration

 103 |  1 |  0**Dave Miller** San Diego, C... Follow







Dave Miller

San Diego, CA, USA

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Comments

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Basic Info

Custom Race Shirts is a racing apparel manufacturer and an NHRA sponsor. I was ask by them to do some designs for Alexis DeJoria's team. These rough designs were part of a pitch for the team's track side apparel sales. Unfortunately they didn't get the contract, but I liked the designs so I'm posting them here.

Published: March 6, 2013

Credits



Dave Miller

📍 San Diego, CA, USA

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Exhibit J



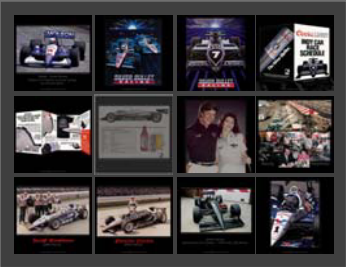
A side-view photograph of a silver and black Indy car. The car features "SILVER BULLET" and "VALVOLINE" branding on the side, and "Coors LIGHT" on the front wing. The number "15" is visible on the side. The car is on a track with a blurred background.

Engine:	Cosworth—DFX 302 cubic inch Turbo charged
Turbo:	Waters 946 148 inches mercury restriction
Chassis:	Lola T1600
Horsepower:	720
Top Speed:	225 mph
Wheelbase:	110 inches
Length:	15 feet
Width:	28.5 inches—overall
Weight:	1,950 lbs.
Suspension:	Front—pull rod, rear—rocker arm
Fuel:	Manual refueling
Fuel Capacity:	40 gallons
Safety Equipment:	Double over the shoulder seat belt, Lifeline fire bottle
Washers:	Disc—air coolant
Clutch:	AP-3 plate
Tires:	15 inch Goodyear Eagle Racing



A photograph of a brown glass bottle of Coors Light beer and a silver metal mug filled with beer and a head of foam. The bottle and mug both feature the Coors Light logo.

© 1999 Randall Quick Marketing & Design Portfolio. All rights reserved. Photo by: Mike, May 1999. 1/1



Coors Light Race Team
Schedule

Coors Light positioned their racing sponsorship as the "Silver Bullet Racing" team in nationwide store promotions. Randall Quick Contributions: * Designed the Indy Car exterior sponsor design as shown here in this racing schedule promotion. * Developed Silver Bullet premium product programs with Coors, including track side apparel merchandising programs.

Date: 04/04/2009

Exhibit K



ON THE ROAD – OR – ON THE TRACK

AMERICAN ETHANOL PASSES THE TEST

NASCAR® has been racing on Sunoco Green E15, a fuel blended with 15% ethanol made from corn since the 2011 season.

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NHRA: Quartermile Charities to donate proceeds to Race to Read

Posted By Terry Callahan
Motorsports Editor, *The Auto Channel*

July 19, 2001

Quartermile Charities, which owns and operates the track side apparel trailer for Jeg's Mail Order, will donate the proceeds from their [sales](#) at the NHRA Mopar Mile-High Nationals to Race to Read.

"We have been involved with the Bandimere family Race to Read program for a numbers of years. In the past we have donated media kits to give young readers something unique and informative to get excited about reading. Having the proceeds from the sales this weekend in Denver from our Quartermile Charities group will further help this great cause," explained Troy Coughlin.

Troy will be accompanied by his daughter Meghan (13) and his son Troy Jr (11) when the check is presented to the Bandimere family in the pre race activities on Sunday at Bandimere Speedway.

Text provided by Scott Woodruff

Editors Note: To view hundreds of hot racing [photos](#) and art, visit [The Racing Photo Museum](#) and the [Visions of Speed Art Gallery](#).

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SEPT

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Join our fight to end childhood cancer.

Get Involved

St. Jude Children's Research Hospital

ALSAC • Danny Thomas, Founder

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as low as
1.65% APR
New
Used
Refinance
click for details
RBFCU
rbfcu.org

The advertisement features a background of a sandy beach with a beach ball and a blue car in the foreground.

AMERICAN ETHANOL
AMERICAN GROWN. AMERICAN MADE.
POWERING NASCAR.

**ON THE ROAD
OR
ON THE TRACK
AMERICAN ETHANOL
PASSES THE TEST**

4 MILLION MILES
OF TESTING BY THE U.S.
DEPARTMENT OF ENERGY

7 MILLION MILES
OF WORLD-CLASS
RACING BY NASCAR®

The advertisement shows a green and black NASCAR race car with the number 3.

**HEADstrong
Foundation**

**Improving
quality of life
for those affected
by blood cancers**

The advertisement has a blue background with the HEADstrong Foundation logo.

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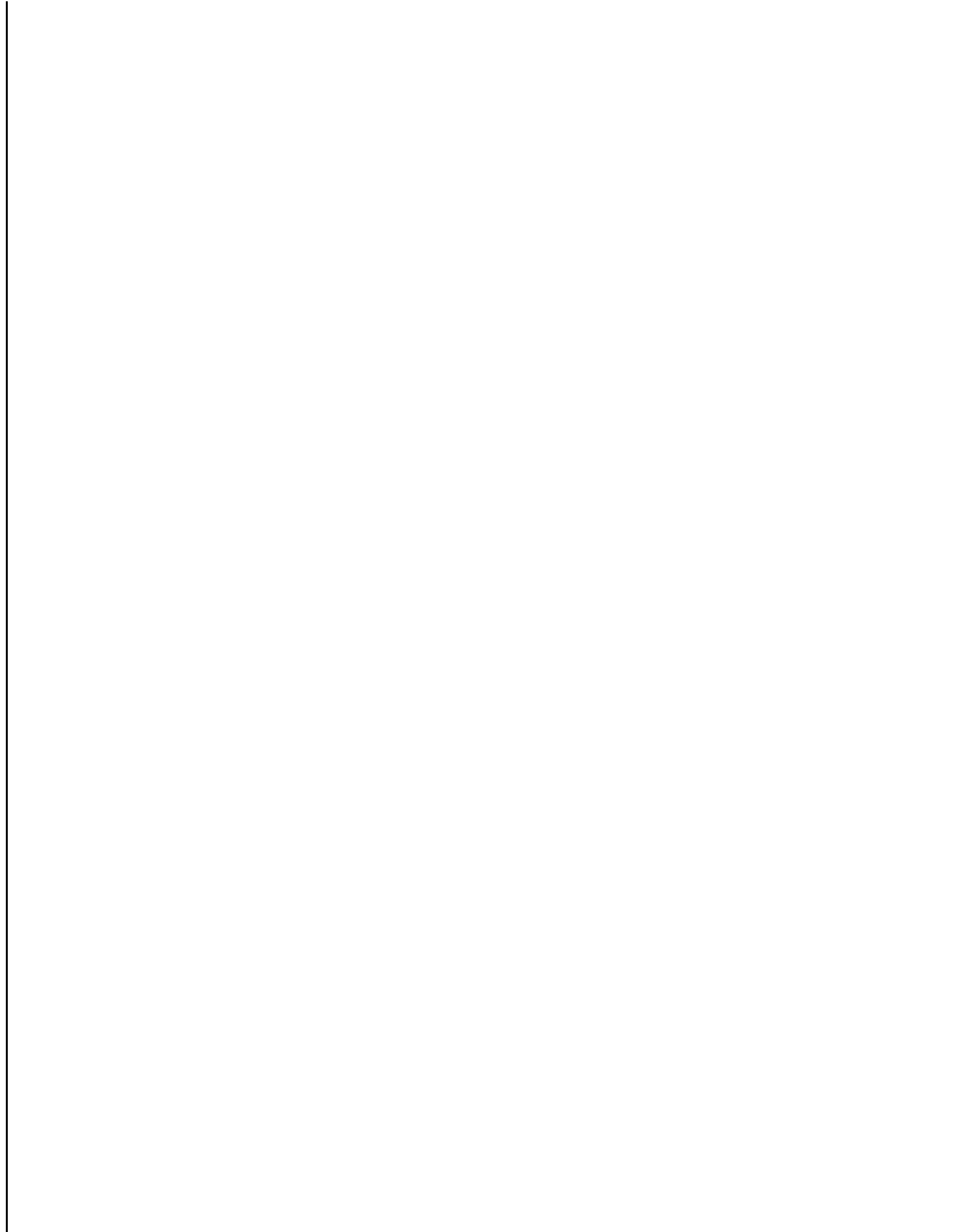
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Exhibit L

Motorsport.com

Charity

Racers golf for a cure

2001-08-05

The 7th Annual Gary Ormsby Memorial Golf Classic was held August 1st at Silverado Country Club located in Napa Valley. The tournament benefits the Mathews Foundation for prostate cancer research and is an event that many in the drag racing...

The 7th Annual Gary Ormsby Memorial Golf Classic was held August 1st at Silverado Country Club located in Napa Valley. The tournament benefits the Mathews Foundation for prostate cancer research and is an event that many in the drag racing community look forward to each year. More than \$20,000 was raised to help fight prostate cancer this year from the event.

The tournament was conceived to honor the memory of Gary Ormsby, a businessman and professional NHRA Top Fuel drag racer from Sacramento. Popular with the loyal fans and respected by his peers. Gary raced Top Fuel dragsters for 27 years. His career was highlighted by winning the 1989 NHRA Winston Top Fuel Championship.

Proceeds from the tournament benefit the Mathews Foundation for Prostate Cancer Research. Incorporated in 1988 as a publicly supported charity, the foundation provides information and counseling on the cause, prevention and treatment of prostate cancer.

The awards ceremony at the conclusion of the golfing includes dinner, a raffle and an auction which is always fun filled for everyone involved. The auction is filled with racing memorabilia, hard to find collectable items and a variety of donated items from friends of the racing community and the Ormsby family.

The title sponsor for the event is Castrol for the sixth year. Other sponsors include Jeg's Mail Order, Bucks Outboard, Alan Johnson Cylinder Heads, Rodeck Aluminum Blocks, Uyebara Race cars, Pete Jackson Gear Drives, Korbel Champagne, Fieldstone Builders and others.

The list of players included NHRA Pro Stock driver Jeg Coughlin Jr, drag racing legend Gary Beck and members of the racing community.

"I look forward to this event all year. Playing golf and raising money for such a great cause are two things that are a lot of fun when they are together. I have seen the tournament grow over the last couple of years and really think that it will continue to get better each year," commented Jeg.

Quatermile Charities, which owns and operates the track side apparel trailer for Jeg's Mail Order, will donate the proceeds from their sales at the NHRA Fram Autolite Nationals to the Mathews Foundation.

"We have been involved with the Mathews Foundation and the Ormsby family for a numbers of years. This is great cause and something that Jeg's is behind a 100%," explained Troy Coughlin.

-Jeg's

Write a comment

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Series [Charity](#) , [NHRA](#)

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Exhibit M



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Kyle Petty - Georgia Pacific - Track side Apparel - Jackets & Shirt

- Sold for: [Start Free Trial](#) or [Sign In](#) to see what it's worth.
- Item Category: Sports
- Source: [eBay](#)

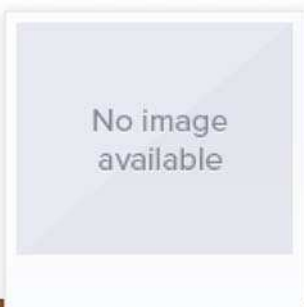
- Sold Date: Mar 14,2013
- Channel: Online Auction

Here is a great collection of track side apparel. This set includes

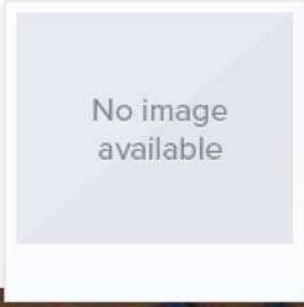
- Kyle Petty Georgia Pacific long sleeve button up white size large - Kyle Petty Georgia Pacific track side jacket black size med - Kyle Petty Georgia Pacific track side jacket blue size x-large

All items are in new condition the way they came from the factory. The jackets are even still in the plastic. Please ask any questions and see pictures

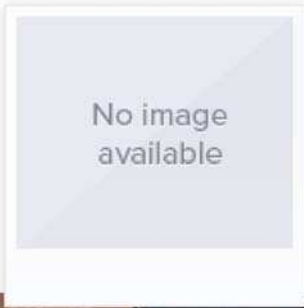
Similar Items



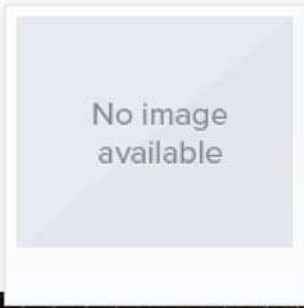
- [Kyle Petty # 45 Georgia Pacific Winston Cup NASCAR JACKET](#)



- [Kyle Petty Georgia Pacific Pit Crew Shirt](#)

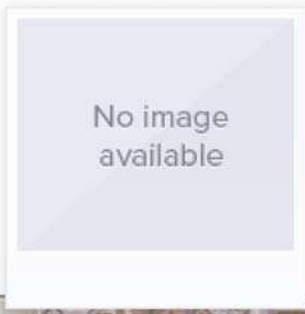


- [Nascar Race Petty Pit Crew Shirt Nextel Cup Series Georgia Pacific Kyle XL](#)



- [1/24 RICHARD PETTY/ KYLE PETTY GEORGIA PACIFIC CAR SIGNED AUTOGRAPHED](#)

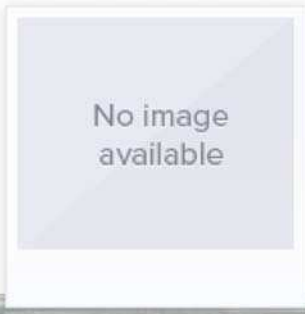
More Items From eBay



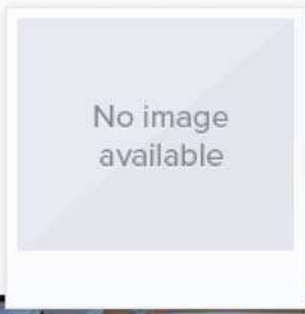
- [SPORTS CARD MEGA LOT GAME USED!! Kobe, Lebron, Garnett](#)



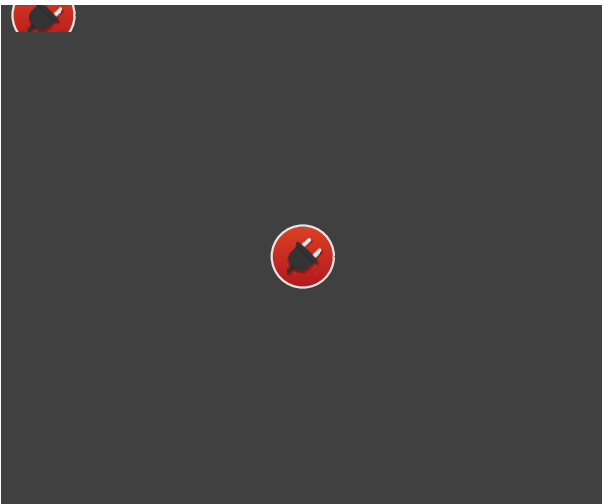
- [1898 Print Girl I Left Behind Me Landscape Gate Women Horse Randolph Caldecott](#)



- [2001 SP Authentic Golf Tiger Woods Autographed - Parallel #45 Mint 9 362/900](#)



- [Tom Whalen "Two-Gun Mickey" Disney Mondo Art Poster Print - Numbered](#)





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Intrepid Georgia Pacific #45

\$8.99



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The 50% OFF Sale, and Free Shipping on orders of \$149 and up, is still going!

Don't forget to snag some trackside apparel, too! Check out items such as the retro styled QDP T-Shirt: <http://bit.ly/1ytFISr>

December 8, 2014

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